

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 322

Introduced by Assembly Member Yamada
(Coauthor: Senator Correa)

February 12, 2013

An act to add Chapter 13 (commencing with Section 1796) to Division 2 of the Health and Safety Code, relating to home care services, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 322, as amended, Yamada. Home Care Services Act of 2013.

Existing law provides for the licensing and regulation of various community care facilities by the State Department of Social Services.

This bill would enact the Home Care Services Act of 2013 and would provide for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services. The bill would establish home care organizations as being recognized in the health care industry. The bill would prohibit, after January 1, 2016, an *individual or entity* from arranging for the provision of home care ~~services~~ *services, as defined*, by a home care aide without first obtaining a license and would *authorize a district attorney, the Attorney General, or the department to* impose a civil penalty on an individual or entity that operates a home care organization without a license. The bill would also impose various licensure requirements on a home care organization. The bill would require a home care organization to provide a client with specified information before arranging for the provision of home care ~~services, as defined, services~~ to that client, including, but not limited to, the types and hours of available home care services and the extent

to which payment may be expected from specified sources. In addition, the home care organization would be required to, among other things, distribute to the client a written notice of certain enumerated rights.

This bill would prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills. The bill would require a home care organization to conduct background clearances on home care aides, as specified, and to require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified, and to ensure that home care aides demonstrate basic competency in certain areas. The bill would establish the Home Care Organization Fund, would authorize the department to impose various fees to be deposited in that fund, and would make a continuous appropriation from that fund to the department to carry out the provisions of the act. The bill, in addition, would prescribe enforcement procedures and penalties for violations of the act.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Seniors, individuals with disabilities, and the frail frequently
- 4 find themselves in need of part-time to full-time assistance from
- 5 a caregiver in order to live at home independently.
- 6 (b) The Employment Development Department has identified
- 7 home care services as one of the fastest growing fields.
- 8 (c) In California, most individuals hiring a home care
- 9 organization believe that the home care aide entering their home
- 10 has been thoroughly screened and trained. However, a business
- 11 license is the only requirement needed to provide nonmedical home
- 12 care services in an individual's home.
- 13 (d) In view of the increasing number of home care aides entering
- 14 private homes, the number of incidents of abuse and neglect by
- 15 home care aides currently being reported in the media is alarming
- 16 and a matter of concern because, according to prosecutors, for

1 every reported incident of abuse or neglect, four others go
2 unreported.

3 (e) Discharge planners commonly keep lists of home care aides
4 and home care organizations for purposes of patient referral without
5 any information about the individuals or the organizations, thereby
6 placing the client and the referring organization at risk.

7 SEC. 2. Chapter 13 (commencing with Section 1796) is added
8 to Division 2 of the Health and Safety Code, to read:

10 CHAPTER 13. HOME CARE SERVICES ACT OF 2013

11
12 Article 1. General Provisions

13
14 1796. This chapter shall be known and may be cited as the
15 Home Care Services Act of 2013.

16 1796.1. The State Department of Social Services shall
17 administer and enforce this chapter.

18 1796.2. For purposes of this chapter, the following definitions
19 shall apply:

20 (a) "Client" means an individual who receives home care
21 services.

22 (b) "Department" means the State Department of Social
23 Services.

24 (c) (1) "Home care aide" means an individual who is paid to
25 provide home care services to a client in the client's residence,
26 and is synonymous with "caregiver," "custodial care," "personal
27 care attendant," "homemaker," and "companion." In addition,
28 "home care aide" includes an individual who qualifies as a personal
29 attendant, as defined in Industry Wage Order 15-2001, issued by
30 the Industrial Welfare Commission, and provides home care
31 services.

32 (2) *A "home care aide" does not include a person who is*
33 *employed by, or contracts with, an organization vendored by or*
34 *contracted through a regional center of the State Department of*
35 *Developmental Services pursuant to the Lanterman Developmental*
36 *Disabilities Services Act (Division 4.5 (commencing with Section*
37 *4500) of the Welfare and Institutions Code) or the California Early*
38 *Intervention Services Act (Title 14 (commencing with Section*
39 *95000) of the Government Code) to provide services and supports*
40 *for persons with developmental disabilities, as defined in Section*

1 *4512 of the Welfare and Institutions Code, when funding for those*
2 *services is provided through the State Department of*
3 *Developmental Services.*

4 (d) “Home care organization” or “organization” means an
5 individual, partnership, corporation, limited liability company,
6 joint venture, association, or other entity that arranges for the
7 provision of home care services by a home care aide to a client in
8 the client’s residence and that is licensed pursuant to this chapter.
9 Home care organization shall not include any of the following:

10 (1) A home health agency licensed under Chapter 8
11 (commencing with Section 1725).

12 (2) A hospice licensed under Chapter 8.5 (commencing with
13 Section 1745).

14 (3) A health facility licensed under Chapter 2 (commencing
15 with Section 1250).

16 (4) A county providing in-home supportive services pursuant
17 to Article 7 (commencing with Section 12300) of Chapter 3 of
18 Part 3 of Division 9 of the Welfare and Institutions Code, without
19 regard to whether the county provides these services as a public
20 authority or through a nonprofit consortium established pursuant
21 to Section 12301.6 of the Welfare and Institutions Code.

22 (5) An employment agency, as defined under Chapter 1
23 (commencing with Section 1812.500) of Title 2.91 of Part 4 of
24 Division 3 of the Civil Code.

25 (6) A nurses’ registry, as defined under Chapter 7 (commencing
26 with Section 1812.524) of Title 2.91 of Part 4 of Division 3 of the
27 Civil Code.

28 (e) (1) “Home care services” means services provided by a
29 home care aide to a client who, because of advanced age or physical
30 or mental infirmity, cannot care for the client’s own needs. These
31 services include, but are not limited to, bathing, dressing, feeding,
32 exercising, personal hygiene and grooming, transferring,
33 ambulating, positioning, toileting and incontinence care, assisting
34 with medication that the client normally self-administers,
35 housekeeping, meal planning and preparation, laundry,
36 transportation, making telephone calls, shopping for personal care
37 items or groceries, and companionship. Nothing in this subdivision
38 shall be construed to authorize a home care aide to administer
39 medication.

40 (2) Home care services shall not include any of the following:

1 (A) Services authorized to be provided by a licensed home
2 health agency under Chapter 8 (commencing with Section 1725).

3 (B) Services authorized to be provided by a licensed hospice
4 pursuant to Chapter 8.5 (commencing with Section 1745).

5 (C) Services authorized to be provided by a licensed health
6 facility pursuant to Chapter 2 (commencing with Section 1250) of
7 Division 2.

8 (D) In-home supportive services provided pursuant to Article
9 7 (commencing with Section 12300) of Chapter 3 of Part 3 of
10 Division 9 of the Welfare and Institutions Code.

11 (E) Services provided by organizations that provide only
12 housekeeping services.

13 (F) Services authorized to be provided by a licensed residential
14 care facility for the elderly pursuant to Chapter 3.2 (commencing
15 with Section 1569).

16 (G) *Services provided by an organization vendored by or*
17 *contracted through a regional center or the State Department of*
18 *Developmental Services pursuant to the Lanterman Developmental*
19 *Disabilities Services Act (Division 4.5 (commencing with Section*
20 *4500) of the Welfare and Institutions Code) or the California Early*
21 *Intervention Services Act (Title 14 (commencing with Section*
22 *95000) of the Government Code) to provide services and supports*
23 *for persons with developmental disabilities, as defined in Section*
24 *4512 of the Welfare and Institutions Code, when funding for those*
25 *services is provided through the State Department of*
26 *Developmental Services.*

27 (f) "Residence" means a temporary or permanent location where
28 a client receives home care services.

29 1796.3. Nothing in this chapter shall be construed to prohibit
30 an individual from employing a home care aide without the
31 assistance of a home care organization.

32 1796.4. This chapter shall establish home care organizations
33 as being recognized in the health care industry.

34
35 Article 2. Licensure
36

37 1796.5. (a) Commencing January 1, 2016, an individual,
38 partnership, corporation, limited liability company, joint venture,
39 association, or other entity shall not arrange for the provision of

1 home care services by a home care aide to a client in the state
2 without first obtaining a license pursuant to this chapter.

3 (b) Upon discovering that an individual or entity is in violation
4 of this chapter, the department shall send a written notice of
5 noncompliance to the individual or entity and to a district attorney
6 or the Attorney General. Upon receiving this notice, a district
7 attorney or the Attorney General may do any of the following:

8 (1) Issue a cease and desist order, which shall remain in effect
9 until the individual or entity has obtained a license pursuant to this
10 chapter. Upon receipt of a cease and desist order, the individual
11 or entity in violation shall be responsible for the safe and timely
12 transfer of clients to a licensed provider of similar services. If the
13 department assumes responsibility for the safe and timely transfer
14 of clients to a licensed provider of similar services, then the
15 individual or entity in violation is responsible for all costs incurred
16 by the department in association with the transfer. The individual
17 or entity in violation shall in no way benefit, financially or
18 otherwise, through the transfer process. If the individual or entity
19 fails to comply with the cease and desist notice, the Attorney
20 General or a district attorney may petition the court for the issuance
21 of an injunction restraining the individual or entity from continuing
22 the violation of this chapter.

23 (2) Impose a civil penalty of four hundred dollars (\$400) per
24 day for each calendar day of violation.

25 (3) Bring an action against the individual or entity under Chapter
26 5 (commencing with Section 17200) of Part 2 of Division 7 of the
27 Business and Professions Code.

28 1796.7. A home care organization that has its principal place
29 of business in another state shall, in addition to the other
30 requirements of this chapter, comply with ~~both~~ *all* of the following
31 requirements before arranging for the provision of home care
32 services by a home care aide to a client in California:

33 (a) Have a physical location in California.

34 (b) Obtain authorization from the Secretary of State to conduct
35 business in California.

36 (c) Comply with Section 1796.21.

37 1796.8. No private or public organization, excluding any county
38 providing in-home supportive services pursuant to Article 7
39 (commencing with Section 12300) of Chapter 3 of Part 3 of
40 Division 9 of the Welfare and Institutions ~~Code~~ *Code, licensed*

1 *home health agency pursuant to Chapter 8 (commencing with*
2 *Section 1725), or licensed hospice pursuant to Chapter 8.5*
3 *(commencing with Section 1745), shall do any of the following*
4 *unless it is licensed under this chapter:*

5 (a) Represent itself to be a home care organization by its name
6 or advertisement, soliciting, or any other presentments to the public,
7 or in the context of services within the scope of this chapter imply
8 that it is licensed to provide those services or to make any reference
9 to employee bonding in relation to those services.

10 (b) Use the words “home care organization,” “home care,”
11 “home-care,” “homecare,” or “in-home care,” or any combination
12 of those terms, within its name.

13 1796.9. The enactment of this chapter is an exercise of the
14 general authority of the state for the protection of the public
15 welfare, prosperity, health, safety, and peace of its people. The
16 civil penalties provided by this chapter are in addition to any other
17 penalty provided by law.

18 1796.11. In order to administer this chapter, the department
19 shall do all of the following:

20 (a) Adopt rules and regulations to implement and administer
21 this chapter.

22 (b) Establish procedures for the receipt, investigation, and
23 resolution of complaints against home care organizations.

24 (c) Make available on the department’s Internet Web site a list
25 of home care organizations, including, for each organization, the
26 organization’s name, address, license number, and the effective
27 date of its license.

28 1796.13. (a) The department shall issue a license to a home
29 care organization that meets all of the following requirements:

30 (1) Submits an application, on a form prescribed by the
31 department.

32 (2) Pays a licensure fee, as prescribed by the department
33 pursuant to Section 1796.39.

34 (3) Submits proof of general and professional liability insurance
35 in the amount of at least one million dollars (\$1,000,000) per
36 occurrence and three million dollars (\$3,000,000) in the aggregate.

37 (4) Submits proof of a valid workers’ compensation policy
38 covering its home care aides. The proof shall consist of the policy
39 number, the effective and expiration dates of the policy, and the
40 name and address of the policy carrier.

1 (5) The owner of the organization passes a background clearance
2 pursuant to Section 1796.17.

3 (6) Complies with the requirements of this chapter.

4 (b) The term of a license issued under this section is two years.
5 The license may be renewed upon application to the department
6 and payment of the renewal fee prescribed by the department
7 pursuant to Section 1796.39.

8 1796.15. At least 60 days before the expiration of a license,
9 the department shall provide the licensee, through electronic mail
10 or other means, at the latest contact address furnished by the
11 licensee to the department, a notice stating the amount of the
12 renewal fee and the date on which it is due, and that failure to pay
13 that fee on or before the date due shall result in the expiration of
14 the license.

15 1796.17. (a) In order for a home care organization to obtain a
16 license, the following individual or individuals shall consent to
17 the background clearance described in subdivision (b) of Section
18 1796.33:

19 (1) The owner or owners of a home care organization if the
20 owners are individuals.

21 (2) If the owner of a home care organization is a corporation,
22 limited liability company, joint venture, association, or other entity,
23 an individual having a 5-percent or greater interest in that entity.

24 (b) If the background clearance conducted pursuant to
25 subdivision (a) discloses a conviction for a crime that is
26 substantially related to the qualifications, functions, or duties of
27 operating a home care organization, the application for a license
28 may be denied, except that a license shall not be denied pursuant
29 to this subdivision if the individual has obtained a certificate of
30 rehabilitation pursuant to Chapter 3.5 (commencing with Section
31 4852.01) of Title 6 of Part 3 of the Penal Code or if the information
32 or accusation against the individual has been dismissed pursuant
33 to Section 1203.4 of the Penal Code.

34 (c) If the department denies an application for a license because
35 of a conviction for a crime as described in subdivision (b) or if the
36 department denies a license renewal based upon a subsequent
37 conviction for a crime as described in subdivision (b), the
38 department shall notify the individual convicted of that crime of
39 this determination by either personal service or registered mail,
40 and this notice shall include all of the following:

1 (1) A statement of the department's reasons for the denial. This
2 statement shall evaluate any evidence of rehabilitation submitted
3 by the individual.

4 (2) A copy of the individual's criminal offender record
5 information search response. The department shall provide this
6 information in a manner that protects the confidentiality and
7 privacy of the criminal offender record information search
8 response.

9 (A) The state criminal history record shall not be modified or
10 altered from its form or content as provided by the Department of
11 Justice.

12 (B) The department shall record the date the response was
13 provided by the Department of Justice and the date the department
14 provided the copy of the response to the individual.

15 (C) The criminal offender record information search response
16 shall not be made available by the department to any individual
17 other than an individual convicted of a crime that is the basis for
18 a denial by the department pursuant to this section.

19 (d) (1) An individual with a conviction that results in the denial
20 of a license pursuant to this section may request an administrative
21 hearing by submitting a written request to the department within
22 15 business days of receipt of the written notice pursuant to
23 subdivision (c).

24 (2) The department shall hold an administrative hearing upon
25 receipt of the written request from the individual pursuant to
26 paragraph (1). The administrative hearing shall be consistent with
27 the procedures specified in Section 100171, except where those
28 procedures are inconsistent with this section. The administrative
29 hearing shall be conducted by a hearing officer or administrative
30 law judge designated by the director.

31 (3) The hearing officer or administrative law judge shall make
32 a written decision that shall be sent by certified mail to the
33 individual who requested the hearing.

34 Article 3. Complaints, Inspections, and Investigations

35
36
37 1796.19. (a) The department shall review and, if it determines
38 necessary, investigate complaints filed against a home care
39 organization.

(b) An investigation or inspection by the department pursuant to this chapter may include both of the following:

(1) Inspection of the books, records, and premises of a home care organization. An organization's refusal to make those records, books, or premises available shall constitute cause for the revocation of the organization's license.

(2) Direct observation of the provision of home care services to a client in the client's residence, if the client's consent is obtained.

Article 4. Organization Operating Requirements

1796.21. (a) A home care organization shall do all of the following:

(1) Post its license in its place of business in a conspicuous location, visible both to clients and to its home care aides.

(2) Maintain a physical address.

(3) Have policies for client protection and client rights.

(4) Have a written agreement with clients that includes a specification of fees charged.

(5) Classify all workers engaged in the direct provision of home care services as employees of the home care organization.

(6) Maintain valid general and professional liability insurance policies in the amount of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate.

(7) Maintain a valid workers' compensation policy covering its home care aides.

(8) Maintain an employee dishonesty bond, including third-party coverage, with a minimum limit of ten thousand dollars (\$10,000).

(9) Comply with the regulations adopted by the department pursuant to this chapter and laws adopted regarding the provision of home care services.

(b) Nothing in this chapter shall prohibit a licensed home care organization from contracting with another licensed home care organization for the provision of services.

1796.23. With respect to home care aides employed by a home care organization, the organization shall do all of the following:

(a) Investigate complaints made by a client, or a client's family member or guardian, against home care aides regarding a service

1 that is, or fails to be, furnished. The organization shall document
2 both the existence and the resolution of those complaints.

3 (b) Evaluate home care aides by conducting an annual
4 assessment of the performance and effectiveness of each home
5 care aide. The evaluation shall include, if client consent is obtained,
6 at least one observation of the aide providing home care services
7 in the residence of a client.

8 (c) Ensure that a home care aide, when providing services to a
9 client, has access at all times to a representative of the organization
10 who is in a supervisory capacity.

11 (d) Require a home care aide, while providing home care
12 services, to carry an organization-approved identification card.

13 (e) Require home care aides to demonstrate that they are free
14 of active tuberculosis pursuant to Section 1796.35.

15 (f) Prohibit home care aides from accepting money or property
16 from a client without written permission from the home care
17 organization.

18 (g) Oversee the care of the client, including supervisory visits
19 and updates to the plan of care as necessary.

20
21 Article 5. Client Rights
22

23 1796.25. (a) Clients of home care organizations are entitled
24 to the following rights:

25 (1) The right to have the client's property treated with respect.

26 (2) The right to voice grievances free from reprisal regarding a
27 home care service that is, or fails to be, provided or regarding the
28 violation of any of the rights listed in this section.

29 (3) The right to be informed of, and to participate in the planning
30 of, the client's home care services.

31 (4) The right to be informed of the hours, services, and costs
32 that will be provided in the client's home.

33 (5) The right to be informed of the client records policies and
34 have the confidentiality of the client's personal information
35 protected.

36 (b) Within seven days of the start of the provision of home care
37 services to a client, a home care organization shall provide a written
38 notice to the client that the client has all of the rights enumerated
39 in subdivision (a).

(c) A home care organization shall maintain written documentation showing that it has complied with subdivision (b).

(d) If a client lacks the capacity to understand the rights listed in this section, as determined by a court of competent jurisdiction or by the client's physician, unless the physician's opinion is controverted by the client or the client's legal representative, the client's legal representative shall have the rights listed in this section.

(e) A home care organization shall protect, and promote the exercise of, the rights listed in this section.

1796.27. (a) Home care clients are entitled to the following rights:

(1) The right to have the client's property treated with respect.

(2) The right to voice grievances free from reprisal regarding a home care service that is or fails to be provided or regarding the violation of any of the rights listed in this section.

(3) The right to be informed ~~of~~ *of*, and to participate in the planning ~~of~~ *of*, the client's home care services.

(4) The right to confidentiality of the client's personal information.

(b) Before arranging for the provision of home care services to a client, a home care organization shall provide a written notice to the client stating that the client has all of the rights enumerated in subdivision (a).

(c) A home care organization shall maintain written documentation showing that it has complied with subdivision (b).

(d) If a client lacks the capacity to understand the rights listed in this section, as determined by a court of competent jurisdiction or by the client's physician, unless the physician's opinion is controverted by the client or the client's legal representative, the client's legal representative shall have those rights.

(e) A home care organization shall protect, and promote the exercise of, the rights listed in this section.

Article 6. Home Care Aides

1796.31. A home care organization shall, by January 1, 2015, ensure that home care ~~aids~~ *aides* who were hired before January 1, 2015, meet both of the following requirements:

1 (a) Demonstrate ~~the that he or she has sufficient~~ language skills
2 ~~specified in paragraph (1) of subdivision (a) of Section 1796.27~~
3 ~~to communicate with the client.~~

4 (b) Demonstrate basic competency in the ~~areas specified in~~
5 ~~subdivision (b) of Section 1796.27~~ skills required to meet the needs
6 of the client.

7 1796.33. (a) A home care organization shall conduct a
8 background clearance on an individual hired as a home care aide,
9 unless the individual holds a valid, unexpired license or registration
10 in a health-related field that requires, as a condition of the license
11 or registration, a background check or a criminal history record
12 check as specified in subdivision (b).

13 (b) The background clearance shall consist of a criminal history
14 record check conducted by the Department of Justice and
15 administered by the State Department of Social Services.

16 (c) The organization shall deny or terminate, as applicable, the
17 employment of an individual if the background check required by
18 subdivision (b) discloses that it has been less than 10 years since
19 the date of a conviction for, or the date of incarceration following
20 a conviction for, any of the following:

21 (1) Fraud against a government health care or supportive
22 services program, including, but not limited to, Medicare,
23 Medicaid, or services provided under Title V, Title XX, or Title
24 XXI of the federal Social Security Act, or a violation of subdivision
25 (a) of Section 273a of the Penal Code, Section 368 of the Penal
26 Code, or similar violations in another jurisdiction.

27 (2) A violent or serious felony, as specified in subdivision (c)
28 of Section 667.5 of the Penal Code or subdivision (c) of Section
29 1192.7 of the Penal Code.

30 (3) A felony offense for which a person is required to register
31 pursuant to subdivision (c) of Section 290 of the Penal Code. For
32 purposes of this paragraph, the 10-year time period specified in
33 this section shall commence with the date of conviction for, or the
34 date of incarceration following a conviction for, the underlying
35 offense and not the date of registration.

36 (d) Notwithstanding subdivision (c), the organization shall not
37 deny or terminate the employment of any individual pursuant to
38 this section if the individual has obtained a certificate of
39 rehabilitation pursuant to Chapter 3.5 (commencing with Section
40 4852.01) of Title 6 of Part 3 of the Penal Code or the information

1 or accusation against the individual has been dismissed pursuant
2 to Section 1203.4 of the Penal Code.

3 (e) Notwithstanding subdivision (c), an individual who has been
4 convicted of an offense identified in subdivision (c) may seek from
5 the department a general exception to the exclusion provided for
6 in this section. In determining whether to grant a general exception,
7 the department shall consider as evidence of good character and
8 rehabilitation the following factors:

9 (1) The nature and seriousness of the conviction under
10 consideration and its relationship to the individual's employment
11 duties and responsibilities.

12 (2) Activities since conviction that would indicate changed
13 behavior, including, but not limited to, employment, participation
14 in therapy, or education.

15 (3) The time that has elapsed since the commission of the crime
16 and the number of offenses.

17 (4) The extent to which the individual has complied with any
18 terms of parole, probation, restitution, or any other sanction
19 lawfully imposed against the individual.

20 (5) Any rehabilitation evidence submitted by the individual,
21 including, but not limited to, character references.

22 (6) Employment history and current employer recommendations.

23 (7) Circumstances surrounding the commission of the crime
24 that would demonstrate the unlikelihood of repetition.

25 (f) Upon determination to deny a request for exception, the
26 department shall notify the individual of this determination by
27 either personal service or registered mail, and this notice shall
28 include all of the following:

29 (1) A statement of the department's reasons for the denial. This
30 statement shall evaluate any evidence of rehabilitation submitted
31 by the individual, and specifically address any evidence submitted
32 relating to the factors considered in subdivision (e).

33 (2) A copy of the individual's criminal offender record
34 information search response. The department shall provide this
35 information in a manner that protects the confidentiality and
36 privacy of the criminal offender record information search
37 response.

38 (A) The state criminal history record shall not be modified or
39 altered from its form or content as provided by the Department of
40 Justice.

1 (B) The department shall record the date the response was
2 provided by the Department of Justice and the date the department
3 provided the copy of the response to the individual.

4 (C) The criminal offender record information search response
5 shall not be made available by the department to any individual
6 other than the applicant.

7 (g) (1) An individual whose request for an exception has been
8 denied may request an administrative hearing by submitting a
9 written request to the department within 15 business days of receipt
10 of the written notice pursuant to subdivision (f).

11 (2) The department shall hold an administrative hearing upon
12 receipt of the written request from the individual pursuant to
13 paragraph (1). The administrative hearing shall be consistent with
14 the procedures specified in Section 100171, except where those
15 procedures are inconsistent with this section. The administrative
16 hearing shall be conducted by a hearing officer or administrative
17 law judge designated by the director.

18 (3) The hearing officer or administrative law judge shall make
19 a written decision that shall be sent by certified mail to the
20 individual who requested the hearing.

21 (h) The organization shall complete the background clearance
22 specified in subdivision (b) on home care aides whose employment
23 began before January 1, 2014, within two years of the effective
24 date of this section.

25 (i) A home care aide hired on or after January 1, 2014, shall not
26 be permitted to provide home care services until he or she passes
27 the background clearance or has been granted a general exception
28 by the department pursuant to this section.

29 1796.35. (a) An individual hired as a home care aide on or
30 after January 1, 2014, shall be terminated from employment unless
31 the individual submitted to an examination within six months prior
32 to employment or submits to an examination within 14 days after
33 employment to determine that the individual is free of active
34 tuberculosis. For purposes of this section, "examination" consists
35 of a tuberculin skin test and, if that test is positive, an X-ray of the
36 lungs.

37 (b) A home care aide whose employment with a home care
38 organization began before January 1, 2014, shall, on or before
39 March 1, 2014, submit to the examination described in subdivision
40 (a).

1 (c) After submitting to an examination, a home care aide who
2 is skin test negative shall be required to undergo an examination
3 at least once every two years. Once a home care aide has a
4 documented positive skin test that has been followed by an X-ray,
5 the examination is no longer required.

6 (d) After the examination, a home care aide shall submit, and
7 the organization shall keep on file, a certificate from the examining
8 practitioner showing that the home care aide was examined and
9 found free from active tuberculosis.

10 (e) The examination shall be a condition of initial and continuing
11 employment with the home care organization. The home care aide
12 shall pay the cost of the examination.

13 (f) A home care aide who transfers employment from one
14 organization to another shall be deemed to meet the requirements
15 of subdivision (a) or (b) if that individual can produce a certificate
16 showing that he or she submitted to the examination within the
17 past two years and was found to be free of communicable
18 tuberculosis, or if it is verified by the organization previously
19 employing him or her that it has a certificate on file which contains
20 that showing.

21 (g) Notwithstanding the results of an examination, a home care
22 aide shall annually complete a tuberculosis survey that includes,
23 but is not limited to, all of the following information:

24 (1) The individual's name, address, and telephone number.

25 (2) The date and result of all previous tuberculin skin tests and,
26 where applicable, all X-ray examinations.

27 (3) Answers to questions concerning whether the individual has
28 recently experienced any of the following symptoms:

29 (A) A chronic cough for a period exceeding two weeks.

30 (B) Chronic fatigue or listlessness for a period exceeding two
31 weeks.

32 (C) Fever for a period exceeding one week.

33 (D) Night sweats.

34 (E) Unexplained weight loss.

35 Article 7. Revenues

36
37
38 1796.37. There is in the State Treasury the Home Care
39 Organization Fund. Notwithstanding Section 13340 of the
40 Government Code, all money in the fund is continuously

1 appropriated to the department for the purpose of carrying out and
2 enforcing this chapter.

3 1796.39. The department shall assess fees for each location of
4 a home care organization in amounts sufficient to cover the costs
5 of administering this chapter. The department may periodically
6 adjust these fees for inflation. The fees collected pursuant to this
7 chapter shall be deposited in the Home Care Organization Fund.
8 The department shall consult with the state home care industry
9 association in developing the fee methodology.

10
11 Article 8. Enforcement and Penalties
12

13 1796.40. (a) A home care organization operating in violation
14 of this chapter or any rule adopted hereunder may be subject to
15 the penalties or fines levied or licensure action taken by the
16 department as specified in this section.

17 (b) When the department determines that a home care
18 organization is in violation of this chapter or any regulations
19 adopted hereunder, a notice of violation shall be served upon the
20 licensee. Each notice of violation shall be prepared in writing and
21 shall specify the nature of the violation and the statutory provision
22 or regulation alleged to have been violated. The notice shall inform
23 the licensee of any action the department may take under this
24 chapter, including the requirement of an agency plan of correction,
25 assessment of a penalty, or action to suspend, revoke, or deny
26 renewal of the license. The director or his or her designee shall
27 also inform the licensee of rights to a hearing under this chapter.

28 (c) The department may impose an administrative fine of up to
29 four hundred dollars (\$400) per day commencing on the date the
30 violation was identified and ending on the date the violation is
31 corrected, or action is taken to suspend, revoke, or deny renewal
32 of the license, whichever comes first.

33 (d) In determining the penalty or licensure action, the director
34 shall consider all of the following factors:

35 (1) The gravity of the violation, including the probability that
36 death or serious physical or mental harm to a client will result or
37 has resulted, the severity of the actual or potential harm, and the
38 extent to which the provisions of the applicable statutes or
39 regulations were violated.

- 1 (2) The reasonable diligence exercised by the licensee and
- 2 efforts to correct violations.
- 3 (3) Any previous violations committed by the licensee.
- 4 (4) The financial benefit to the home care organization of
- 5 committing or continuing the violation.
- 6 (e) The department shall adopt regulations establishing
- 7 procedures for notices, correction plans, appeals, and hearings. In
- 8 developing the procedures, the department shall convene and
- 9 consult with a working group of affected stakeholders.